

COMDTINST 16004.2
26 NOV 2002

COMMANDANT INSTRUCTION 16004.2

Subj: COASTAL ZONE MANAGEMENT, FEDERAL CONSISTENCY PROCEDURES

- Ref: (a) Coastal Zone Management Act of 1972, as amended through P.L. 104-105, The Coastal Zone Protection Act of 1996 (16 U.S.C. 1451 et seq.)
(b) Coastal Zone Management Act Federal Consistency Regulations, 15 CFR 930, Federal Register Vol. 65, No. 237, Dec. 8, 2000, 77124-77175
(c) Coastal Zone Management Program Regulations, 15 CFR 923
(d) Commanding Officer's Environmental Guide, COMDT PUB P5090.1(series)
(e) National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1(series), Chapter 2.D.2
(f) Natural Resources Management, COMDTINST M5090.3(series)

1. PURPOSE. This Instruction establishes policy and prescribed responsibilities and procedures for Coast Guard implementation of references (a) and (b) and other related laws and regulations.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands (MLCs), commanding officers of headquarter units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure that the provision of this Instruction are followed in the consideration of coastal effects or effects on any coastal use or resource of Coast Guard actions. All program guidance in implementing this Instruction shall be submitted by program managers to Commandant (G-SEC) for review and concurrence to ensure consistency with this Instruction prior to issuance. Internet release authorized.

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3. DIRECTIVES AFFECTED. Coastal Zone Management, Coordination Procedures, COMDTINST 16004.1A was canceled.
4. BACKGROUND. Reference (a) (CZMA) establishes a national policy to: "...preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone...." Few of our Nation's environmental laws have as great a potential impact on the Coast Guard as the CZMA. The CZMA allows the States, with few constraints, to define their own coastal zones and to pervasively regulate activities in those areas and to develop and implement Coastal Zone Management Programs (CZMPs). Reference (a) also requires Federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone, regardless of location, to be consistent to the maximum extent practicable with the enforceable policies of a coastal State's federally approved CZMP. Recognizing Coast Guard's federal environmental stewardship as stated in reference (d) and consistent with references (e) and (f), the purpose of this instruction is to provide policy and procedural guidance to Coast Guard officials of their compliance and federal environmental stewardship responsibilities under references (a), (b) and (c).
 - a. The term "coastal state" means a state, commonwealth, or territory of the United States, in or bordering on the Atlantic, Pacific, or the Arctic Ocean, the Gulf of Mexico, Long Island Sound or one or more of the Great Lakes.
 - b. "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes, and (2) in other areas, those waters adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.
 - c. "Coastal zone" under the CZMA means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal government, its officers or agents. Consistency requirements of the Act apply

to Coast Guard activities, occurring or located on such excluded lands, that impact coastal zone resources outside those lands. Coastal zones vary greatly from state to state, so it is critical for Coast Guard planners and other program personnel to be aware of the individual State coastal zone definitions because they describe the areas within which the impacts of Coast Guard activities must be compliant with the State law.

- d. “Coastal effects” or effect on any coastal use or resource means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. Effects are not just environmental effects, but include both direct and indirect effects on coastal uses. Direct effects result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are also effects that result from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.
- e. “Interstate coastal effects” means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program.
- f. “Associated facilities” means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., Coast Guard activity, development project, license, permit, or assistance), and without which the activity, as proposed, could not be conducted.
- g. “Coastal use or resource” means any land or water use or natural resource of the coastal zone and any use of these resources described in a State's coastal zone management program. Land and water uses, or coastal uses include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creations or restoration projects. Natural resources include biological or physical resources that are found within a State’s coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also include uses and resources appropriately described in a management program.
- h. “Coastal Zone Management Program” is the State’s coastal program approved by the National Oceanic and Atmospheric Administration (NOAA) pursuant to Section 306 of the CZMA which includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State, that sets forth its objectives, policies and standards to guide public and private uses of lands and waters and resources within its coastal zone.

- i. “Enforceable policy” means State policies which are legally binding under State law (e.g., through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions), and by which a State exerts control over public and private land and water uses and natural resources in the coastal zone. These policies should be incorporated in the State’s coastal zone management program as approved by Office of Ocean and Coastal Resources Management (OCRM), NOAA either as part or program approval or as a program change under 15 CFR 923, subpart H.
- j. “Negative Determination” means the Coast Guard’s written determination that a project or activity will have no reasonably foreseeable effects on any coastal use or resource. The Coast Guard shall provide a negative determination to the relevant State agency for a Coast Guard activity as discussed in 6.a.
- k. The term “Consistent to the Maximum Extent Practicable” means fully consistent with the enforceable policies of a State CZMP’s substantive requirements as well as the procedural requirements of NOAA’s regulations unless full consistency is prohibited by existing law applicable to the Federal agency. A federal agency may deviate from full consistency due to “exigent circumstances” (e.g., emergency or emergency-like or unexpected situation requiring the Federal agency to take quick or immediate action). See 7.m. of this Instruction for further guidance.
- l. “Listed Activities” are federal agency activities listed by State agencies in their coastal zone management programs which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination.
- m. “Unlisted Activities” are those not specifically listed in the State’s CZMP but which may have reasonably foreseeable coastal effects and for which a State may advise the Coast Guard that a consistency determination is required.
- n. “Coast Guard Activity” are any functions performed by or on behalf of the Coast Guard in the exercise of its statutory responsibilities (e.g., facilities development, tests, or exercises). The term “action” is used interchangeably for the term “activity” in this Instruction.
- o. “Coast Guard Development Project” is an activity that involves: (1) the planning, construction, modification, or removal of public work facilities or other structures within the coastal zone or outside the coastal zone if the activity results in any spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state’s management program; and, (2) includes the acquisition, use or disposal of any coastal use or resource.

5. DISCUSSION.

- a. Implementation of the Act requires participation by Federal agencies having responsibilities in the coastal zone. The Act is administered at the Federal level by

the Coastal Programs Division (CPD) within the NOAA's Office of Ocean and Coastal Resource Management (OCRM) of the Department of Commerce. NOAA's primary role is to assist the States in developing and implementing their CZMPs. NOAA reviews and approves the states' CZMPs submitted along with an Environmental Impact Statement (EIS), for conformity with national policy and with the guidelines and goals of the CZMA. Except for Illinois which chose not to participate in CZMP, all the CZMPs submitted by 35 of the 36 coastal states and territories were approved by NOAA. See Enclosure (7) for State Coastal Management Program Federal Consistency Contacts.

- b. By the very nature of its mission, nearly all Coast Guard activities are conducted in the coastal zone, and are potentially subject to the strictures of federally approved State Coastal Zone Management Programs. Construction, permitting and licensing, and regulatory activities are the Coast Guard activities most likely to be affected. All Coast Guard activities or development projects (within or outside the coastal zone) that have reasonably foreseeable direct or indirect effects on any land or water use or natural resource of the coastal zone, shall be carried out in a manner that is consistent with the enforceable policies of a State's federally approved management program. (See 16 U.S.C. 1456 (c)(1) and (2)). Examples of these activities are:
 - (1) Coast Guard projects or activities that will take place on federal property, but will have effects outside of federal property;
 - (2) Non-federal projects or activities that will take place on non-federal property but which will be paid for with Federal funds from the Coast Guard (with or with no other federal agency involved).
- c. All Coast Guard development projects or activities occurring in the coastal zone (outside of Federally owned, leased or otherwise excluded lands) shall be considered to have an effect on any coastal use. Example: Coast Guard projects or activities that will take place on non-federal property.

6. RESPONSIBILITIES.

- a. The Coast Guard, not the State, shall determine whether Coast Guard development projects or activities are to the maximum extent practicable consistent with the federally approved State Coastal Zone Management Program. Reference (c) is recommended for use in determining other responsibilities of the Coast Guard required by the CZMA. Enclosure (54) lists some Coast Guard actions subject to federal consistency determination.
- b. The consistency determination shall be issued by the District Commander, MLC Commander, or responsible official of the unit (e.g. CEU) under whose purview the project will take place.
- c. Consistency determinations and negative determinations shall be prepared as stand-alone documents or can be incorporated into documentation (e.g., EA, EIS, etc.)

prepared pursuant to NEPA. The consistency determination **should be done in the early planning stages of a project or activity or as early as possible.**

- d. The Coast Guard must conduct an “effects test” for every development project or activity. “Effects Test” means the test by which the Coast Guard determines compliance with CZMA Section 307 requirements. If a project or an activity initiates a series of events where direct or indirect coastal effects on a coastal use or resource are reasonably foreseeable, regardless of location of the activity, the Coast Guard shall be consistent to the maximum extent practicable with the enforceable policies of a State’s federally approved CZMP.
 - e. Questions on whether a consistency determination is necessary for a particular Coast Guard action, the matter should be referred to Commandant (G-LEL) for legal analysis and policy recommendation.
7. **PROCEDURES.** The Coast Guard shall notify the State agency of its determination in the following manner: (See Enclosure (3), CZMA Federal Consistency Compliance Summary Flowchart for determining proper notification document.)
- a. **Negative Determination:** The Coast Guard shall provide the State agency a **negative determination** if the Coast Guard has determined that a development project or agency activity will have **no** reasonably foreseeable coastal effects and falls under one of the following:
 - 1) The activity is identified as a Listed Activity by a State agency, as described in 15 CFR 930.34(b) of reference (b); or
 - 2) The State has notified the Coast Guard that as a result of its case-by-case monitoring of Unlisted Activities that a Coast Guard activity may have reasonably foreseeable coastal effects and that the federal consistency provisions of CZMA Section 307 apply; or
 - 3) The activity is the same as or similar to activities for which consistency determinations have been prepared in the past; or
 - 4) The activity was the subject of a “thorough consistency assessment” which was undertaken by the Coast Guard and resulted in initial findings that the activity has no coastal effects.

A negative determination may be written in any form so long as it contains a brief description of the project or activity, the project or activity’s location and the basis for the Coast Guard’s determination that the project or activity will not affect any coastal use or resource. The negative determination shall be provided to the State agency at least 90 days before final approval of the project or activity. If a State agency does not respond to the Coast Guard’s negative determination within 60 days, State agency concurrence shall be presumed. The State is entitled to one extension of 15 days or

less to review the matter, and longer or additional extensions is at the discretion of the Coast Guard.

- b. Consistency Determination: If the Coast Guard has determined that a development project or activity will have a reasonably foreseeable coastal effect, it shall provide a consistency determination to the State agency indicating that the development project or agency activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the federally approved State coastal zone management program. The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the State management program, a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support Coast Guard's consistency statement. The consistency determination shall be provided to the State agency at least 90 days before final approval of the project development or agency activity unless an alternative notification has been agreed upon and provided that public participation requirements are met. If a State agency does not respond to the consistency determination within 60 days, State agency concurrence shall be presumed. The State is entitled to one extension of 15 days or less to review the matter, and longer or additional extensions is at the discretion of the Coast Guard. See Enclosure (1), USCG Coastal Zone Management Act (CZMA) Consistency Determination.
- c. De minimis activities: The Coast Guard should review its agency activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these *de minimis* activities should not be subject to further State agency review. *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*. If the State agency objects to the Coast Guard's *de minimis* finding, then the Coast Guard shall provide the State agency with either a negative determination or a consistency determination. See Enclosure (6) for a list of proposed Coast Guard *de minimis* activities.
- d. General Consistency Determinations: In cases where the Coast Guard will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Coast Guard shall develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determination for each incremental action controlled by the major activity. Coast Guard must thereafter periodically consult with the State agency to discuss the manner in which incremental actions are being undertaken.
- e. Phased Consistency Determinations: In cases where the Coast Guard has sufficient information to determine the consistency of a proposed development project or activity from planning to completion, the Coast Guard shall provide the State agency with one consistency determination for the entire activity or development project. In cases where Coast Guard decision will be made in phases based upon developing

- information that was not available at the time the original consistency determination, with each subsequent phase subjected to the decision-maker's discretion to implement alternative decisions based upon such information (e.g. planning, siting, and design decisions), a consistency determination will be required for each major decision or phase. In cases of phased decision-making, responsible official shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the State CZMP.
- f. National or Regional Consistency Determinations: The Coast Guard may provide State agencies with a national or regional consistency determination for its activities that are national or regional in scope and that affect any coastal use or resource of more than one State. The national or regional consistency determination should, at a minimum, address the common coastal effects and management issues, and thereby address different State's policies with one discussion and determination. If the Coast Guard decides not to use this type, it must issue consistency determination to each State agency whose coastal area is affected by the project or activity.
 - g. Consistency Determinations and National Environmental Policy Act Requirements (NEPA): The Coast Guard may use its National Environmental Policy Act (NEPA) documents as a vehicle for its negative determination or consistency determination, however, meeting the criteria set forth in the NEPA does not necessarily mean that the obligations under this Act are satisfied. The NEPA document and the consistency determination shall be accomplished in the early planning stages of the project or activity.
 - h. Multiple Federal Agency Participation: The Coast Guard should consider joint preparation or lead agency development of the consistency determination for all the federal activities involved, whenever the Coast Guard is involved in an activity with another Federal agency or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity. The consistency certification shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies.
 - i. Consistency of Federal Activities Having Interstate Coastal Effects: Whenever a Coast Guard project development or activity may affect coastal uses or resources of a State other than the State in which the activity will occur, the Coast Guard must ensure that the project or activity is conducted consistent with the enforceable policies of the management program of each affected State.
 - j. Consistency for Activities Requiring a Federal License or Permit: The Coast Guard shall not issue licenses and permits to conduct an activity which has any reasonably foreseeable effect on land or water uses or natural resources in or outside the coastal zone (if the activity will result in any spillover impacts to any use or resource in the coastal zone) unless the applicant has certified that the proposed project complies with and will be conducted in a manner consistent with the federally approved State

management program and the State concurs in that certification, or fails to object within six months after receipt from the applicant of a copy of the certification. This provision does not apply where the State has specifically excluded the activity from the State's federally approved coastal zone management program, in which case normal Coast Guard permitting procedures apply. (See 16 U.S.C. 1456(c)(3)). See Enclosure (2), Coastal Zone Management Act (CZMA) Consistency Determination for Non-Federal Applicants.

- (1) Only "site specific" licenses and permits, e.g., bridge permits, deepwater port development, and private aids-to-navigation permits, are subject to these consistency requirements. Under this category, it is the permit applicant, not the Coast Guard, who makes the certification to the State. Enclosure (4) lists those types of Coast Guard permits, licenses and their citations that are site specific.
- k. State Agency Objection to Coast Guard Determination and Mediation: If a State agency objects to a Coast Guard negative or consistency determination, the Coast Guard shall attempt to negotiate and resolve the issue with the State agency within the remainder of the 90-day period. Coast Guard shall not proceed with the activity over the State agency's objections unless:
- (1) Coast Guard has concluded that under existing law it is prohibited from the standard of being fully "consistent to the maximum extent practicable" with a State's CZMP and has notified the State agency in writing, or
 - (2) Coast Guard has concluded that its project or activity is fully consistent with the enforceable policies of the State CZMP, though the State agency objects.
 - (3) In either case, Coast Guard shall notify the State agency of its decision to proceed with the project or activity that is objected to by the State before the project or activity commences.
 - (4) In the event of a serious disagreement between Coast Guard and a State agency regarding the consistency of a proposed Coast Guard project or activity affecting any coastal use or resource, either party may request mediation from the NOAA's Office of Ocean and Coastal Resource Management or the Secretary of Commerce.
- l. Necessary in the Interest of National Security and Presidential Exemptions: If a Coast Guard development project or agency activity, or the issuance of a Coast Guard license or permit, is necessary in the interest of national security, a waiver of the consistency requirements may be obtained from the Secretary of Commerce. Department of Commerce regulations at Title 15 CFR 930.122 should be consulted.
- m. Emergency and Exigent Circumstances and Presidential Exemptions: A Federal agency may deviate from full consistency if the activity is exempted by the President under section 307(c)(1)(B) of the Act (16 U.S.C. 1456(c)(1)(B)). Some of these

circumstances are:

- (1) Full consistency is prohibited by existing law applicable to the Federal agency. If a Federal agency asserts that full consistency is prohibited, it shall describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.
- (2) Such a deviation is justified by an emergency or other similar unforeseen circumstances (exigent circumstances) which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. A Federal agency shall consult with State agency to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Federal regulations at 15 CFR 930.32 should be consulted.
- (3) A classified activity that affects any coastal use or resource and is listed as exempted from the requirements of full consistency by the President under section 307(c)(1)(B) of the Act (16 U.S.C. 1456(c)(1)(B)). A classified activity is an action for which the Coast Guard is required to protect from disclosure national security policy, provided it has been properly classified in accordance with the substantive and procedural requirements of an executive order. Even when an activity is classified, Coast Guard shall conduct the activity consistent to the maximum extent practicable with the enforceable policies of a State's coastal management plan.
- (4) Not fully consistent with an enforceable policy due to lack of funding when the activity is exempted by the Presidential as described in Section 307(c)(1)(B) of the CZMA (16 USC 1456(c)(1)(B)).

J. A. KINGHORN /s/
Rear Admiral, U. S. Coast Guard
Assistant Commandant For Systems

- Encl:
- (1) USCG Coastal Zone Management Act (CZMA) Consistency Determination
 - (2) Coastal Zone Management Act (CZMA) Consistency Determination for Non-Federal Applicants
 - (3) CZMA Federal Consistency Compliance Summary Flowchart
 - (4) Site Specific Permits, Licenses, and Citations
 - (5) List of Coast Guard Actions Subject to Federal Consistency Determination
 - (6) Proposed Coast Guard *De Minimis* Activities
 - (7) State Coastal Management Program Federal Consistency Contacts

**USCG COASTAL ZONE MANAGEMENT ACT (CZMA)
CONSISTENCY DETERMINATION**

This document provides the [Name of the State] Coastal Management Program with the Coast Guard's Consistency Determination under CZMA Section 307(c)(1)[or (2)] and 15 CFR Part 930, subpart C for the [name the CG project/activity]. The information in this Consistency Determination is provided pursuant to 15 CFR Part 930 Section 930.39. This project/activity includes:

[Describe the Coast Guard project/activity or reference relevant pages of NEPA document.]

The Coast Guard has determined that the [project/activity] affects the land or water uses or natural resources of [Name of the State] in the following manner:

[Provide analysis of effects or reference relevant pages of NEPA document.]

The [Name of the State's] Coastal Management Program contains the following applicable enforceable policies:

[List and/or briefly describe the State's applicable enforceable policies.]

Based upon the following information, data and analysis the Coast Guard finds that the [project/activity] is consistent to the maximum extent practicable with the enforceable policies of the [Name of the State] Coastal Management Program. [Provide information, data and analysis supporting the determination of consistency with the applicable enforceable policies.]

Pursuant to 15 CFR Section 930.41, the [Name of the State] Coastal Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR Section 930.41(b). The State's concurrence will be presumed if the State's response is not received by the Coast Guard on the 60th day from receipt of this Determination. The State's response should be sent to:

[Provide Coast Guard contact information.]

**COASTAL ZONE MANAGEMENT ACT (CZMA)
CONSISTENCY DETERMINATION FOR NON-FEDERAL APPLICANTS**

COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY CERTIFICATION

This document provides the [Name of the State] Coastal Management Program with the [Name of Applicant's] Consistency Determination and necessary data and information under CZMA Section 307(c)(3)(A) and 15 CFR Part 930, subpart D, for the [Name of Activity].

Certification:

[Name of Applicant] certifies that the proposed activity complies with the enforceable policies of [Name of State's] approved management program and will be conducted in a manner consistent with such program.

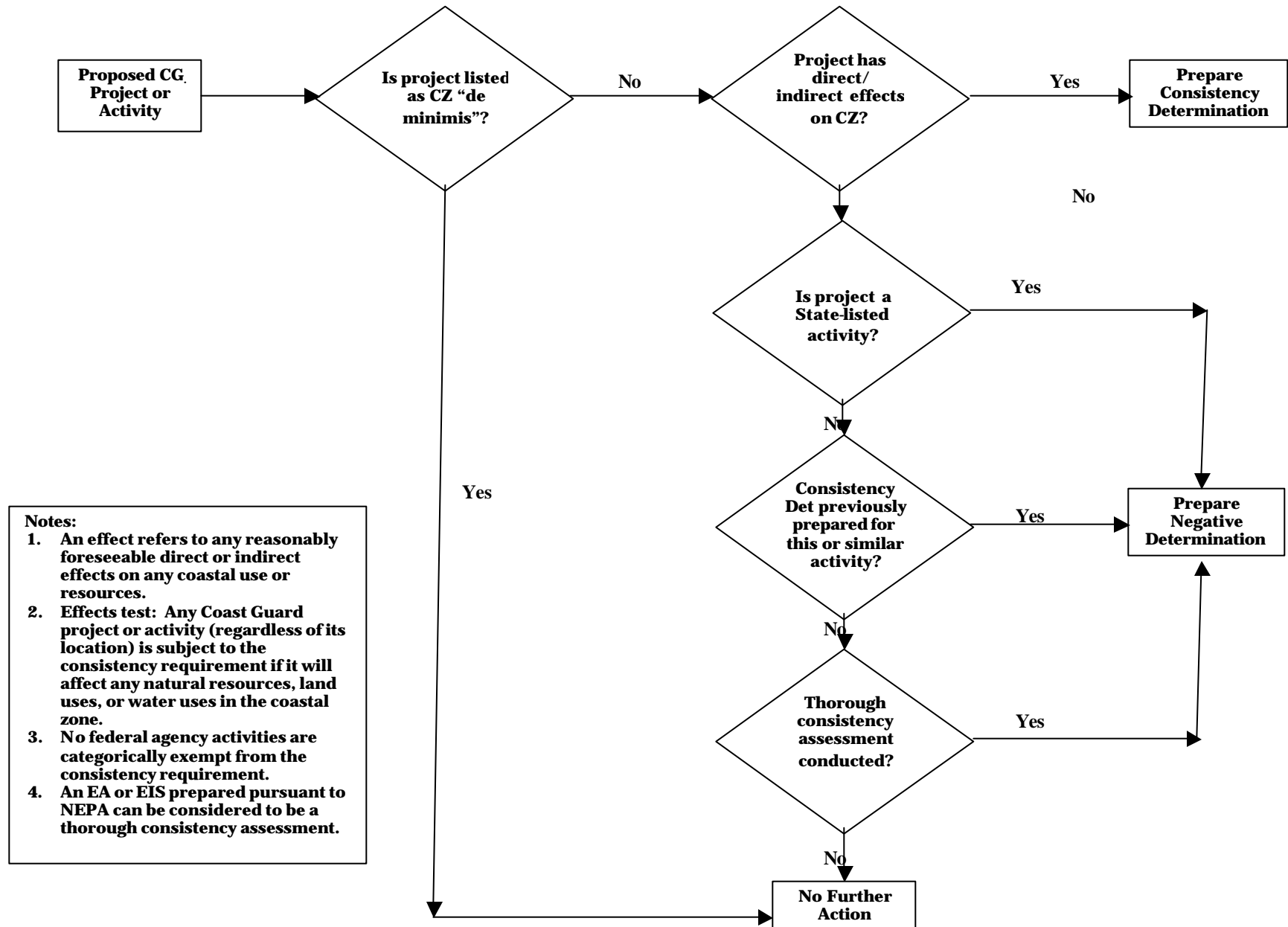
Necessary Data and Information:

1. [Describe the Federal license or permit activity or reference relevant pages of the Federal application, any associated facilities, and coastal effects. Provide materials which will facilitate evaluation of coastal effects].
2. [Provide additional information required by the State pursuant to 15 CFR 930.58(a)(2)].
3. [Provide an evaluation that includes a set of findings relating the probable coastal effects of the proposed project and its associated facilities to the relevant enforceable policies of the State's Coastal Management Program].

[Contact State agency to help determine relevant enforceable policies].

By this certification that the [project] is consistent with [Name of State's] Coastal Management Program, [Name of State] is notified that it has six months from the receipt of this letter and accompanying information in which to concur with or object to [Applicant's Name] certification. Pursuant to 15 CFR 930.63(b), if [Name of State] has not issued a decision within three months following commencement of State agency review, it shall notify [Name of Applicant] and the Federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to: [Provide applicant and Federal agency's contact information].

CZMA FEDERAL CONSISTENCY COMPLIANCE SUMMARY FLOWCHART



SITE SPECIFIC PERMITS, LICENSES, AND CITATIONS

Bridge and Causeway Permits	33 USC 401, 491, 514 and 525
Deepwater Port Development	33 USC 1501, et seq.
Private Aids-to-Navigation	14 USC 83

**LIST OF COAST GUARD ACTIONS SUBJECT TO FEDERAL CONSISTENCY
DETERMINATION**

DIRECT FEDERAL ACTIVITIES: These are direct Coast Guard activities and development projects performed by or on behalf of the Coast Guard in exercise of its statutory responsibilities

Examples:

Location, acquisition, design, construction, operation or enlargement of Coast Guard Stations, bases and lighthouses

Location, placement or removal of air or sea navigation devices

Expansion, abandonment, designation of anchorages, lightering areas, shipping lanes or pilot areas.

Designation and management of Regulated Navigation Areas and Limited Access Areas

Designation of Security and Safety Zones under the Port and Waterways Safety Act

Location and design of aviation communication and air navigation facilities within the coastal zone

Area Contingency Plans developed under the Oil Pollution Control Act

Transport and transfer of hazardous substances and materials

Ice breaking

Oil and hazardous material pollution response planning and response activities

Changes in regulations affecting port and waterway safety, designation of anchorage grounds

Any activity related to oil spill or other clean-up operations which involves permanent alteration of a critical area

Actions of private contractors acting at the Coast Guard's behest

LICENSES or Permits: This is when the Coast Guard issues any authorization, certification, approval, or other form of permission for an activity which may affect the coastal zone. Note that many renewals and major amendments to existing licenses may require a consistency determination. (e.g. bridge permits, private aids-to-navigation, etc.)

Examples:

Permits for construction and modification of bridges, causeways and pipelines over navigable waters

Permits and licenses for siting, construction and operation of deepwater ports

Marine event permits (applies in Georgia, Minnesota, Ohio)

Permits for private aids-to-navigation

Permits and authorization for handling of dangerous cargo by vessels in U.S. ports

FINANCIAL ASSISTANCE to STATE and LOCAL GOVERNMENTS: This includes any financial aid given by the Coast Guard to any State or local government unit through grant or contract, loans, subsidies, guarantees, insurance, etc. which might affect the coastal zone. (e.g., State recreational boating safety programs, and possibly Oil Pollution Act of 1990 (OPA 90) Trust Fund).

Examples:

Funding of State boating safety programs

Boating Safety Financial Assistance

OUTER CONTINENTAL SHELF (OCS) EXPLORATION, DEVELOPMENT and PRODUCTION ACTIVITIES: These are any kind of permit or license activities which are “described in detail” in OCS plans. Generally, this involves oil and mineral leasing. The Coast Guard is only tangentially involved.

PROPOSED COAST GUARD *DE MINIMIS* ACTIVITIES

To the extent the following Federal activities result in coastal effects, these activities shall be considered *de minimis* and shall not, upon state concurrence with this determination, be subject to further state agency review in accordance with 15 C.F.R. 930.33(3)(i).

1. Routine administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
2. Civil and criminal enforcement activities, such as investigations, audits, inspection, examinations, prosecutions, and the training of law enforcement personnel (including physical plant protection and security).
3. Routine use and operation of existing facilities, laboratories, and equipment.
4. Administrative studies, surveys, and data collection.
5. Judicial and legislative proceedings.
6. Rulemaking and policy development and issuance.
7. Military ceremonies.
8. Routine procurement of goods and services.
9. Routine recreation and welfare activities other than development projects (e.g., tournaments, concerts, sporting events).
10. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increased disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.
11. Routine commissary and exchange operations other than development projects.
12. Routine repair and maintenance activities other than development or redevelopment, including repair and maintenance of existing administrative sites, roads, trails, buildings, facilities, grounds, airfields, vessels, aircraft and equipment associated with existing operations and activities (e.g., localized pest management activities, minor erosion control measures, painting, refitting).
13. Routine repair, renovation, and maintenance actions on aircraft and vessels.

14. Routine repair and maintenance of waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.
15. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, unburied power cables, which do not require, special, site-specific regulatory permits.
16. Routine repair and replacing of real property installed equipment.
17. Routine recurring transportation of material and personnel.
18. Routine operation of facilities, mobile assets, and equipment.
19. Routine movement of mobile assets (such as vessels, vehicles, aircraft and equipment) for homeport reassignments, for repair/overhaul, or to train/perform as operational groups where no new support facilities are required.
20. Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (e.g., consumables, electronic components, computer equipment, pumps).
21. Routine storage of materials, including ammunition, explosives, pyrotechnics, nuclear, and other hazardous or toxic materials where the items are used and handled in accordance with applicable regulations.
22. Training of administrative or classroom nature.
23. Simulated war games and other tactical and logistical training exercises without troops or equipment.
24. Actions with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands (e.g. relocation of personnel, disposition of federally-owned existing structures, properties, facilities and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, and assistance in purchasing structures).
25. Actions, including alteration and additions of existing structures, specifically required to conform to new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines or scrubbers for air emissions, improvements to storm water and sanitary and industrial waste water collection and treatment systems, and installation of fire fighting equipment).
26. The modification of existing systems or equipment when the coastal effects will remain substantially the same and the use is consistent with applicable enforceable policies and regulations.

27. New activities conducted at established laboratories and plants, (including contractor-operated laboratories and plants) where all airborne emissions, waterborne effluent, external ionizing and non-ionizing radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state and local laws and regulations.
28. Any Bridge Program action which is reviewed or classified as a categorically excluded (CE) action by another Department of Transportation agency acting as lead agency for such an action.
29. New construction on heavily developed portions of US Government property, when construction, use, and operation will comply with regulatory requirements and constraints.
30. Planning, studies, data and information gathering and provisions of technical assistance that involve no commitment of resources other than manpower and no permanent physical change to the environment, (e.g., topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses).
31. Temporary placement and use of simulated target fields (e.g., inert mines, simulated mines, or passive hydrophones) in fresh, estuarine, and marine waters for the purpose of military training exercise or research, development, test and evaluation.
32. Installation and operation of passive scientific measuring devices (e.g., antenna, tide gauges, weighted hydrophones, salinity measurement devices, oil detection devices, and water quality measurement devices) where all use will not result in changes in operations tempo and is consistent with applicable enforceable policies and regulations.
33. Short term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is less.
34. Decommissioning, disposal, or transfer of vessels, aircraft, vehicles and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous substances.
35. Non-routine repair, renovation, and donation or other transfer of structures, vessels, aircraft, vehicles, equipment, landscapes or other contributing elements of facilities which will result in no significant impact (as defined under the NEPA) to a land use, water use or natural resources of the coastal zone.
36. Hosting or participating in public events (e.g., hosting air shows, open houses, golf tournaments, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking and sanitation systems) are required to accommodate all aspects of the event.

37. Military training conducted on federal or over non-federal land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land, and water use (e.g., night compass training, forced marches along trails, roads and highways, use of permanently established ranges, use of public waterways, or use of civilian airfields).
38. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of transfer.
39. Receipt of property from another federal agency when there is no substantial change in land use, water use or natural resource of the coastal zone.
40. Minor land acquisitions where anticipated or proposed land use is consistent with an existing coastal zone land use, water use or natural resource in both type and intensity.
41. Disposals of excess easement interests to the underlying fee owner.
42. Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use, water use, or natural resource of the coastal zone is anticipated.
43. Land withdrawal continuances or extensions that merely establish time periods and where there is no significant change in a land use, water use, or natural resource of the coastal zone.
44. Renewals and/or initial real estate ingrats and outgrants involving existing facilities and land wherein use does not change significantly (e.g., leasing of federally-owned and privately-owned housing or office space, and agricultural outleases).
45. Grants of license, easement, or similar arrangements for the use of existing right-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone and other transmission and communication lines; water, wastewater, storm water, and irrigation pipelines; pumping stations and facilities and for similar utility and transportation uses.
46. Actions (or portions thereof) associated with transfers of land, facilities, title and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific condition is met (e.g. such as promptly after the land is certified as meeting the requirements of CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties. This would only apply to the interim period before transfer of the deed during which the grantee held a lesser interest in the property.
47. Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

48. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.
49. Demolition, disposal, or improvements involving buildings or structures when in accordance with applicable federal, state and local regulations including regulations applying to removal of asbestos, PCBs, and other hazardous materials.
50. Acquisition, installation and operation of utility (e.g., water, sewer, electrical) and communications systems, (e.g., data processing cable and similar electronic equipment) which use existing rights-of-way, easements, distribution systems, and/or facilities.
51. Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of installations, facilities, or equipment, where the installation, facility, or equipment is not used to prevent/control negative coastal effects or environmental impacts.
52. Relocation of personnel into existing federally-owned/controlled or commercially-leased space that does not involve development or a substantial change affecting the supporting infrastructure.
53. Pre-lease exploration activities for oil, gas/geothermal reserves, or other natural resources (e.g., geophysical surveys).
54. Actions implementing a decision to conduct or carry out a conforming program such as prescribed burning actions, which are consistent with a conforming land management plan.
55. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.
56. Actions performed as part of Coast Guard operations and Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.
57. Promulgation of the following regulations:
 - a. Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds.
 - b. Special local regulations issued in conjunction with a regatta or marine parade.
 - c. Regulations in aids to navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communications, vessel traffic services, and marking of navigation systems.

58. Installation of devices to protect human or animal life, (e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas).
59. Reintroduction of endemic or native species (other than federal endangered or threatened species) into their historic habitat when no substantial site preparation/renovation is involved.
60. Temporary closure of public access to federally-owned property in order to protect human or animal life or due to operational security needs.
61. Actions similar in type, intensity and setting (including physical location and, where pertinent, time of year) to other actions for which it has been determined, in a prior EA, EIS, or Federal consistency determination that there were no significant impacts to a land use, water use, or natural resource of the coastal zone.
62. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.
63. Preparation, issuance, or modification of federal agency regulations, directives, administrative procedures, manuals, plans, and other documents that implement, without substantive change, applicable federal agency policy or guidance.
64. Continuation or resumption of pre-existing actions where there is no substantive change in existing conditions or an existing land use, water use, or natural resource of the coastal zone and where the actions were originally evaluated in accordance with applicable law and regulation and surrounding circumstances have not changed.
65. Converting in-house services to contract services.
66. Undertaking specific activities to support remedial actions for purposes of cleanup of hazardous substance releases, hazardous waste sites or contaminated water or soils (e.g., sampling, installation of test monitoring wells).
67. Operating, modifying, and routinely repairing and replacing airfield and port facility operational equipment (e.g., runway visual range equipment, visual glide path systems, and remote transmitter and receiver facilities) at federally-owned airfields and at port facilities.
68. Actions that implement a foreign affairs function of the United States.
69. Immediate responses to operational threats to national security or Department of Defense or Department of Transportation military or civilian personnel, facilities, or property in accordance with approved Department of Defense Anti-Terrorism/Force Protection (AT/FP) or similar DOT response measures, plans, or procedures. Long term proposed AT/FP actions or development projects in or affecting the coastal zone should be evaluated separately.

70. Continuing and recurring activities such as permit renewals; modifications or minor amendments where activities conducted will be similar in scope and operation to activities currently being conducted.
71. Maintenance dredging and debris disposal where no new depths are required, applicable federal, state and local permits are secured, and disposal will be at approved disposal site(s).
72. The portion of an action that includes major new or modified stationary sources that require a permit under the federal Clean Air Act's (42 U.S.C. §§ 7401 *et seq.*) New Source Review (NSR) program or the Prevention of Significant Deterioration (PSD) program.
73. Actions pursuant to an approved Army Corps of Engineer (ACOE) federal Clean Water Act (33 U.S.C. §§ 1321 *et seq.*) Section 404 individual, programmatic, regional or nationwide permit.
74. Actions exempt from ACOE federal Clean Water Act (33 U.S.C. §§ 1321 *et seq.*) Section 404 permit requirements, for example (including but not limited to):
 - a. The discharge of fill material during construction of a Federal project specifically authorized by Congress, provided the effects of the discharge have been considered in a federal Environmental Impact Statement;
 - b. Construction of temporary sedimentation basins on a construction site that does not result in a discharge to the state coastal zone;
 - c. Maintenance of drainage ditches, etc., where the maintenance does not include any modifications that changes the character, scope or size of the original design; or
 - d. Maintenance or emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, bridge abutments or approaches, provided emergency reconstruction occurs within a reasonable time (on the order of hours or days) after the damage. See 33 U.S.C. §§ 1344(f) and (r).
75. Actions in response to the release or discharge of oil or hazardous substances (OHS) as directed by competent response authority in accordance with an approved federal Spill Prevention Response Plan or Spill Contingency Plan that is otherwise consistent with the requirements of the National Oil & Hazardous Substances Pollution Contingency Plan (NCP) (40 C.F.R. Part 300).
76. Environmentally beneficial Federal agency actions that protect, preserve, or restore the natural resources of the coastal zone (e.g., tidal wetlands mitigation or restoration projects).
77. Natural resource management planning and implementation where the underlying natural resource management decisions have been analyzed in a federal Environmental Assessment (EA) or Environmental Impact Statement (EIS).

78. Corrective actions carried out under the federal Resource Conservation and Recovery Act (RCRA)(42 U.S.C. §§ 6901 *et seq.*) and any associated implementing regulations to the extent such actions either comply with the substantive requirements of the approved state program or are exempt from other environmental regulations under the provisions of RCRA and applicable regulations issued under RCRA.
79. Actions for the protection of historic, cultural and archeological resources pursuant to consultations under Section 106 of the federal National Historic Preservation Act (NHPA) (16 U.S.C. §§ 470 *et seq.*) and any associated implementing regulations to include actions pursuant to cooperative agreements with the State Historic Preservation Officer or other state agencies and universities.
80. Actions for the protection of endangered or threatened wildlife or plant species and/or their critical habitat pursuant to consultations with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fishery Service (NMFS) under Section 7 of the federal Endangered Species Act (ESA) (16 U.S.C. §§ 1531 *et seq.*) and any associated implementing regulations.
81. Actions pursuant to National Oceanic and Atmospheric Administration (NOAA) designation of a National Marine Sanctuary pursuant to Title II of the Marine Protection Research & Sanctuaries Act (MPRSA) (16 U.S.C. §§ 1431 *et seq.*) and any associated implementing regulations.
82. Actions pursuant to a permit issued by the U.S. EPA under the Ocean Dumping Act (also known as the Marine Protection, Research, and Sanctuaries Act of 1992 (MPRSA)) (33 U.S.C. §§ 1431 *et seq.*) and any associated implementing regulations.
83. Discharges, other than sewerage, incidental to the normal operation of Coast Guard vessels subject to federal Uniform National Discharge Standards for Vessels of the Armed Forces (40 C.F.R. Part 1700).
84. Any community emergency planning, emergency notification, hazardous chemical reporting, toxic chemical release inventory reporting or other implementing or compliance requirements under the federal Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. §§ 11001 *et seq.*) and any associated implementing regulations.

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